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UNITED STATES OF AMERICA
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 UNITED STATES OF AMERICA,) SA CR No. 10-80-CJC
14)
Plaintiff,) AMENDED GOVERNMENT POSITION
15) WITH RESPECT TO PRESENTENCE
v.) REPORT AND SENTENCING BRIEF
16) REGARDING DEFENDANT GLEN R.
GLEN R. JUSTICE,) JUSTICE; EXHIBITS
17)
Defendant.) Sentencing Date: 2/28/11
18) Sentencing Time: 10:00 a.m.
19)

20 Plaintiff United States of America, by and through its
21 attorney of record, Assistant United States Attorney Jeannie M.
22 Joseph (the "government"), hereby presents its amended position
23 with respect to the Presentence Report and Recommendation ("PSR")
24 and sentencing brief regarding defendant GLEN R. JUSTICE
25 ("defendant"), with attached exhibits.

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1 **I. INTRODUCTION**

2 The government has no objection to and hereby adopts the
3 factual findings and sentencing calculations contained in the PSR
4 disclosed by the United States Probation Office ("USPO") on or
5 about January 13, 2011.

6 **II. OFFENSE CONDUCT**¹

7 Beginning on a date unknown, but no later than in or around
8 2004, and continuing through at least in or around October 2009,
9 in Orange County, California, defendant knowingly and willfully
10 devised and executed a scheme to defraud federally-funded and
11 private health care benefit programs, including but not limited
12 to Medicare, Tricare, carriers contracted with the federal
13 government through the Federal Employee Health Benefit Program,
14 and Blue Cross and Blue Shield of California (collectively
15 "Health Care Benefit Programs" or "HCBPs").

16 Defendant was a licensed physician, who owned and operated a
17 medical practice called Pacific Coast Hematology/Oncology Medical
18 Group, Inc. ("PCHOMG"), located at 11190 Warner Avenue #300,
19 Fountain Valley, California. Defendant also was a provider with
20 numerous HCBPs. As part of the scheme, defendant knowingly and
21 willfully submitted, and caused to be submitted, false and
22 fraudulent claims to HCBPs for the following injectable
23 medications relating to cancer treatment: Neulasta (CPT Codes
24 Q4503 and J2505), Neupogen (CPT Codes J1440 and J1441),
25 Procrit/Epogen/Aranesp (CPT Codes Q0137 and J0880), and Neumega

27 ¹ This is the factual basis defendant stipulated to in his
28 plea agreement. (Plea Agreement, ¶ 10.)

(CPT Codes J2352 and J2355)(collectively "Injectable Medications"). Specifically, defendant billed patients' HCBPs for Injectable Medications knowing that those Injectable Medications never were provided to the patients, or billed patients' HCBPs for more expensive Injectable Medications when less expensive Injectable Medications were provided, i.e., "upcoding." Defendant did this despite being advised by staff not to do so, and subsequent to execution of a search warrant at his medical practice in November 2006.

The following are five of numerous false and fraudulent claims that defendant intentionally, knowingly, and willfully caused to be submitted to and paid by HCBPs for Injectable Medications that were not provided or were "upcoded":

| Count | HCBP | Patient Initials | Date Claim Submitted | Amount Paid | Claim Number |
|-------|---------------------------|------------------|----------------------|-------------|-----------------|
| 1 | Medicare | TA | 3/8/05 | \$1,819.14 | 1105069152750 |
| 2 | Medicare | MB | 2/11/05 | \$1,819.14 | 1105045332740 |
| 3 | Medicare | CC | 9/15/05 | \$494.44 | 1105258413130 |
| 4 | Blue Shield of California | AL | 5/15/09 | \$2,217.21 | 026091411141300 |
| 5 | Blue Cross of California | MM | 6/14/05 | \$2,471.84 | 05171604046 |

As a result of defendant's scheme to defraud, HCBPs suffered losses between \$400,000 and \$1,000,000.

III. GUIDELINES CALCULATIONS

The parties stipulated to the following offense level calculation under the Guidelines:

1 Base Offense Level : 6 [U.S.S.G. § 2B1.1(a)(2)]

2 Specific Offense
 Characteristics

3 Losses between : +14 [U.S.S.G.
 \$400,000-\$1M § 2B1.1(b)(1)(H)]

4 Adjustments

5 Abuse of position : +2 [U.S.S.G. § 3B1.3]
 of trust

6 Acceptance of : -3 [U.S.S.G. § 3E.1]
 responsibility

7 Total : 19

8
 9 (Plea Agreement, ¶ 13.) Further, defendant and the USAO agreed
 10 not to seek, argue, or suggest in any way that any other specific
 11 offense characteristics or adjustments be imposed. (Id.)
 12 However, the parties left open the ability to argue for
 13 departures. (Id.) Further, the government agreed to recommend a
 14 probationary sentencing. (Id. at ¶ 19(e).) However, the
 15 government reserved it's right to argue for an obstruction of
 16 justice enhancement for misconduct that occurred between
 17 defendant's signing of the plea agreement and sentencing. (Id. at
 18 ¶ 13.) Finally, the government is freed from it's obligations
 19 under the plea agreement upon the Court's finding of a breach by
 20 defendant (id. at ¶ 20), including the commission of another crime
 21 (id. at ¶ 17(d)).

22 The PSR calculates defendant's offense level in the same
 23 manner as the government. At criminal history category I, this
 24 provides a sentencing range of 30-37 months imprisonment, and the
 25 PSR recommends a sentence of: 24 months imprisonment; restitution
 26 to be determined at a separate hearing with 90 days (by April 11,
 27 2011); a fine of \$60,000; and a special assessment of \$500 due
 28 immediately.

1 **IV. POST-PLEA MISCONDUCT**

2 Defendant signed his plea agreement on March 15, 2010.
3 Defendant continued to operate and manage PCHOMG until on or about
4 April 2010. Between March and April 2010, defendant continued to
5 bill health insurances for Injectable Medications that were not
6 provided.

7 Specifically, Dr. Jacoub was a physician that worked at
8 PCHOMG from approximately August 2006 to April 2010. Dr. Jacoub
9 would testify that after the search warrant in November 2006,
10 defendant told him and the other staff at PCHOMG that the search
11 was due to a misunderstanding and there were no criminal issues.
12 From March 25-28, 2010, Dr. Jacoub accessed the billing at PCHOMG
13 and discovered multiple patients of his that had Injectable
14 Medications, primarily Neulasta, added to the billing, but which
15 the patients did not receive. This included:

- 16 • Neulasta charges for patient M.E.1 for dates of service
17 2/2/10, 2/19/10, 2/24/10, 3/3/10, and 3/22/10;
- 18 • a Neulasta charge for patient T.T. for date of service
19 3/12/10;
- 20 • a Neulasta charge for patient M.E.2 for date of service
21 3/19/10;
- 22 • Neulasta charges for patient J.H. for dates of service 3/3/10
23 and 3/17/10;
- 24 • a Neulasta charge to BC/BS for patient N.K. for date of
25 service 3/17/10; and
- 26 • Neulasta charges to BC/BS for patient J.M. for dates of
27 service 3/8/10 and 3/19/10.

28 (See report of interview of Dr. Jack F. Jacoub, Exhibit 1.) As
can be seen, many of these dates post-date defendant's signing of
the plea agreement.

/ / /

1 On Monday, May 29, 2010, defendant confronted Dr. Jacoub
 2 about reviewing PCHOMG's billing, and Dr. Jacoub quit the next
 3 day.² (Jacoub Interview Report.) In April 2010, defendant was
 4 removed from operating PCHOMG and the staff was told that
 5 defendant had pleaded guilty to criminal charges. (See report of
 6 interview of Denise Thomas, Exhibit 2.)

7 Biller Denise Thomas worked at PCHOMG from May 2008 through
 8 June 2010. Thomas would testify that, sometime during the last
 9 week of May, a representative for Neulasta came to PCHOMG to audit
 10 Neulasta injections for the months of March and April 2010. There
 11 were eight undocumented postings for Neulasta and one posting for
 12 Neulasta where documentation showed Neupogen given:

- 13 • Neulasta charges to Medicare for patient G.K. for dates of
 14 service 3/4/10, 3/9/10, and 3/18/10;
- 15 • Neulasta charge to Medicare for patient E.S. for date of
 16 service 3/5/10;
- 17 • Neulasta charge to Medicare for patient J.H. for date of
 18 service 3/17/10;
- 19 • Neulasta charge to Medicare for patient L.D. for date of
 20 service 3/2/10;
- 21 • Neulasta charge to Medicare for patient F.H. for date of
 22 service 3/4/10;
- 23 • Neulasta charge to Medicare and Medi-Cal for patient I.M. for
 24 date of service 3/4/10; and
- 25 • Neulasta charge to Medicare for patient S.P. for date of
 26 service 3/16/10.

27 (Thomas Interview Report.) Again, many of these dates post-date
 28 defendant's signing of the plea agreement.

29 / / /

30 ² The government's sentencing brief is corrected to reflect
 31 that Dr. Jacoub quit on April 30, 2010, and was not fired.

1 Finally, Mary Ann Hall, a Physician's Assistant at PCHOMG
2 since 2005, would testify that she noted irregularities in
3 defendant's billing and was assured these would be corrected.
4 However, in early March 2010, a patient approached her complaining
5 that several medications listed on her bill were incorrect.
6 Further, on March 23, 2010, Hall discovered drugs billed for a
7 patient that she never ordered and that were not a part of the
8 patient's treatment plan. Hall suspected fraud and quit on March
9 30, 2010. (Hall Interview Report, Exhibit 3.)

10 **V. RESTITUTION**

11 The PSR defers the determination of restitution to a further
12 hearing before April 11, 2011, pursuant to 18 U.S.C. § 3664(d)(5).
13 In the plea agreement, the parties agreed to a total amount of
14 restitution between \$400,000 and \$1,000,000, although the parties
15 both recognized that "this amount could change based upon facts
16 that come to the attention of the parties prior to sentencing.
17 (Plea Agreement, ¶ 6.) The parties further agreed that defendant
18 would pay restitution at or before the time of sentencing, and
19 that defendant would be credited for any amounts that he paid in
20 any civil settlement with the government. (Id.)

21 Nurse reviewers hired by the government to compare
22 defendant's billing with documented medical treatment given to 52
23 of defendant's patients with Medicare insurance found loss - just
24 as to these beneficiaries - to be \$2,338,303.61.³ (See Nurse
25 Reviewer Chart, Exhibit 4.) However, in light of the plea
26

27 ³ This number was corrected, a decrease of approximately
28 \$90,000, to give credit for medications actually given that were
upcoded when billed.

1 agreement and given a pending civil settlement, the government
2 requests criminal restitution in the amount of \$1,000,000 to
3 Medicare.

4 **VI. SENTENCING RECOMMENDATION**

5 The government initially intended to recommend - in accord
6 with the plea agreement - that defendant be sentenced to
7 probation. However, in light of defendant's obstructive conduct,
8 and should this Court find defendant breached his plea agreement,
9 the government would request a sentence of one year and a day
10 imprisonment.

11 The government initially agreed to a probationary sentence
12 given defendant's exemplary contributions to the community as a
13 doctor, the fact that his clinic was not entirely fraudulent, his
14 age, and his otherwise law-abiding life.⁴ At that time, the
15 government believed that defendant posed little risk of committing
16 further fraud. However, now, given defendant's history of
17 continuing his fraudulent billing, not only after execution of a
18 search warrant at his office, but after he negotiated and signed a
19 plea agreement, the government's feels that only a custodial
20 sentence would reflect the seriousness of the offense, promote
21 respect for the law, provide just punishment for the offense,
22 afford adequate deterrence to defendant and other doctors who
23 contemplate defrauding insurance companies, and protect the public
24 from further crimes of the defendant.

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27 ⁴ The defendant's sentencing brief does an excellent job at
28 outlining the many positive aspects of defendant's life, as well
as a possible psychological reason behind defendant's repeated
fraudulent actions.

1 If the Court determines that defendant has not breached his
2 plea agreement, the government abides by the terms of its plea
3 agreement and recommends a probationary sentence with community
4 service.

5 Dated: February 15, 2011 Respectfully submitted,

6 ANDRÉ BIROTTE JR.
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10 _____/S/
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